

ID: CCA-119162-10

Number: **201012036**

Office:

Release Date: 3/26/2010

UILC: 6325.00-00

From:

Sent: Tuesday, January 19, 2010 3:29 PM

To:

Cc:

Subject: Appeals Hearing Rights – Claim Disallowance ()

You asked our office to review your draft letter disallowing a claim for refund. Our comments follow.

I. Facts

The refund claim originates from the sale of a home in which closed on . According to the seller's final settlement statement, \$ was withheld from the proceeds of the sale and remitted to the Internal Revenue Service to pay off a federal tax lien in the name of with Social Security Number .

The seller (hereinafter, "Claimant") of the above-referenced home was a person by the name of . The Claimant states in his claim for refund that the remittance of the \$ to the Service was a mistake, and that the social security number referenced in the Notice of Federal Tax Lien belonged to the Claimant's father, who is also named .

II. Analysis

Traditionally, only "taxpayers" had standing to bring a refund suit. See Busse v. United States, 542 F.2d 421, 424 (7th Cir. 1976) ("Both parties agree that only 'the taxpayer' can bring a refund suit . . .") I.R.C. § 7701(a)(14) defines "Taxpayer" as "any person subject to any internal revenue tax." In United States v. Williams, 514 U.S. 527 (1995), the United States Supreme Court explored the outer boundaries of who could be considered a "taxpayer." Ms. Williams had bought the marital home from her ex-husband, only to have a notice of federal tax lien filed against it a few weeks later by the Service to secure the ex-husband's outstanding tax debt. Ms. Williams tried to contest the validity of the lien, but the Service argued that she was not a "taxpayer" within the meaning of section 7701(a)(14). The court disagreed, stating, "In placing a lien on her home and then accepting her tax payment under protest, the Government surely subjected Williams to a tax, even though she was not the assessed party." Id. at 535. The Court also observed that without an expansive interpretation of the refund

provisions, third parties in the position of Ms. Williams would not be able to obtain meaningful relief. Id. at 536.

In response to the Supreme Court decision in Williams, Congress amended the Internal Revenue Code in 1998 to provide for refund suits by third-parties such as the Claimant. The amendments added subsection 6325(b)(4) and subsection 7426(a)(4). Pursuant to section 6325(b)(4)(A), the third party has the right to obtain a certificate of discharge by applying to the Secretary of the Treasury (delegated to the Service) for such a certificate after either depositing cash or furnishing a bond sufficient to protect the lien interest of the United States. The Secretary does not have the discretion to refuse to issue a certificate of discharge if the procedure is followed. After the property owner follows the procedure under section 6325(b)(4)(A), the Secretary must refund the amount deposited or release the bond, to the extent that the Secretary determines that the taxpayer's unsatisfied liability giving rise to the lien can be satisfied from a source other than property owned by the third party, or the value of the interest of the United States in the property is less than the Secretary's prior determination of its value. I.R.C. § 6325(b)(4)(B).

Section 7426(a)(4) provides a judicial remedy to resolve disagreements between the Service and third parties about the value of the tax lien and whether the tax lien attaches to the subject property. The owner of the property has 120 days after the certificate is issued to challenge the Secretary's determination by bringing a civil action against the United States in federal district court. I.R.C. § 7426(a)(4). If no action is filed within the 120-day period, the Secretary has 60 days to apply the amount deposited or collected on the bond, to the extent necessary to satisfy the unsatisfied liability secured by the lien and refund any amount which is not used to satisfy the liability. I.R.C. § 6325(b)(4)(C). The judicial remedy available to third parties to challenge the value or attachment of a tax lien to their property is exclusive. Section 7426(a)(4) provides that "No other action may be brought by [a claimant]." Third parties may not obtain relief through the general refund statutory provisions. Munaco v. United States, 522 F.3d 651, 657 (6th Cir. 2008); First Am. Title Ins. Co. v. United States, 520 F.3d 1051, 1053-54 (9th Cir. 2008).

The facts do not indicate whether Claimant obtained a certificate of discharge or brought a civil action in federal court within 120 days. If Claimant failed to request and obtain a certificate of discharge under I.R.C. § 6325(b)(4)(A), the time has now passed for him to request one and subsequently contest the validity of the lien under section 7426(a)(4). As the court said in Munaco v. United States, 522 F.3d 651 (6th Cir. 2008):

The record is not clear about why [the claimant] failed to apply for a certificate of discharge [under I.R.C. § 6325(b)(4)] and exhaust his administrative remedies. Had he done so, the district court presumably would have reached the merits of his claim. With more than \$300,000 at stake, [the claimant] and his counsel had adequate incentive to apprise themselves of the statutory requirements. Unfortunately for [the claimant], his argument cannot be heard. Congress enacted a specific statutory scheme to provide a remedy for persons who find themselves precisely in

his position. [The claimant] ignored the scheme at his own peril, and we are not at liberty to dispense with it.

Id. at 657. Further, even if Claimant has obtained a certificate of discharge, if he failed to bring suit within 120 days after he became eligible to obtain such certificate, he is not entitled to a refund of the disputed funds. Id.

Under sections 6325(a)(4) and 7426(a)(4), Claimant is only entitled to relief if he promptly obtains a certificate of discharge and resolves the dispute with the Service within the 120-day period after the issuance of the certificate, or if he brings suit in federal district court and obtains an order of the court. As is evident from Claimant's refund claim, he did not resolve his dispute with the Service within the 120-day period. However, because it is not clear whether he obtained the relief he seeks from a federal district court, we recommend that you give Claimant the opportunity to provide evidence of an order from a federal district court finding that the tax lien was not attached to his home at the time of sale of the property. If Claimant is not able to produce such evidence, he is not entitled to a refund of the funds he seeks and you would be correct in denying his refund claim.

[REDACTED]

1. [REDACTED]
2. [REDACTED]

We recommend that you revise your draft letter to reflect the foregoing, and our office would be happy to review such revised draft. In the meantime, if our office can be of any further assistance in this matter, please do not hesitate to contact me.

Regards,